



## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

#### 7 CFR Part 1416

[Docket ID: CCC-2022-0001]

RIN 0560-AI63

### Emergency Assistance for Livestock, Honey Bees, and Farm-raised Fish Program (ELAP) Programs

**AGENCY:** Commodity Credit Corporation (CCC) and Farm Service Agency (FSA), USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule makes changes to the Emergency Assistance for Livestock, Honey Bees, and Farm-raised Fish Program (ELAP) to assist producers with the cost of transporting feed to livestock intended for grazing and the cost of transporting livestock intended for grazing to feed. This rule amends the definition of “eligible drought” to cover situations in which any area of a county has been rated by the U.S. Drought Monitor as having a D2 (severe drought) intensity for at least 8 consecutive weeks, which will expand the availability of drought assistance for water transportation and honey bee feed losses. It also removes the restriction on providing assistance for transportation of water to livestock located on land enrolled in the Conservation Reserve Program (CRP).

**DATES:** *Effective* [Insert date of publication in the *FEDERAL REGISTER*].

**FOR FURTHER INFORMATION CONTACT:** Tona Huggins; telephone: (202) 720-6825; e-mail: [Tona.Huggins@usda.gov](mailto:Tona.Huggins@usda.gov). Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720-2600 (voice).

## **SUPPLEMENTARY INFORMATION:**

### **Background**

ELAP provides financial assistance to eligible producers of livestock, honey bees, and farm-raised fish for losses due to disease, certain adverse weather events, and loss conditions, including blizzards and wildfires, as determined by the Secretary. ELAP provides assistance for losses that are not covered by the Livestock Forage Disaster Program (LFP) and the Livestock Indemnity Program (LIP). This rule makes discretionary changes to ELAP to better assist producers who face severe drought conditions.

FSA, which administers ELAP on behalf of CCC, is making discretionary changes to the ELAP regulations in 7 CFR part 1416, subpart B; specifically, in §§ 1416.103, 1416.106, and 1416.110 to assist producers with the cost of transporting feed to livestock intended for grazing and the cost of transporting livestock to feed, when the livestock are intended for grazing. Livestock producers in areas suffering from eligible adverse weather, an eligible loss condition, or eligible drought, who often produce feed on the farm, may find it hard to acquire forage locally. As a result, those producers may be forced to transport feed from unaffected areas or to transport livestock to feed in unaffected areas, which results in additional hauling costs.

To be eligible for ELAP assistance for feed or livestock transportation costs, producers must have incurred costs for additional mileage above normal on or after January 1, 2021, for transporting feed to livestock or livestock to feed. ELAP assistance for the transportation of livestock is only available for the transportation of livestock to feed or feed to livestock, not the return of the animals to their originating location or unloaded truck miles following the delivery of feed. Payments will be calculated by multiplying a national payment rate, as determined in § 1416.109 of the existing ELAP regulations, by the national average price per mile to transport a truckload of eligible livestock or livestock feed, multiplied by the actual number of additional miles the feed or livestock was transported by the producer in excess of 25 miles per truckload of livestock or livestock feed and for no more than 1,000 miles per truckload of livestock or feed

during the program year. The payment calculation is based on a national average price per mile, determined by the Deputy Administrator of Farm Programs for FSA (Deputy Administrator) using a national cost formula developed by FSA. The national average price per mile for each program year will be based on an annual update to the national cost formula which considers the cost of hauling feed or animals above normal mileage, not to include the first 25 miles. The national average price per mile considers the average cost for hauling a truckload of forage or livestock from sources 200 miles away. This national average price per mile may differ from year to year due to changes in fuel costs, truck availability, and driver availability. The Deputy Administrator may determine a different price per mile for a particular state, if the Deputy Administrator determines that a different price is necessary due to differences in state hauling costs compared to national average costs. The original physical location of the livestock will determine the applicable state for payment purposes. Differences in state hauling costs necessitating a different price for a state are expected to be rare.

Payments for losses resulting from costs associated with treating livestock feed transported above normal mileage to prevent the spread of invasive pests will be calculated by multiplying a national payment rate, as determined in § 1416.109 of the existing ELAP regulations, by the producer's actual cost for controlling invasive pests in livestock feed transported above normal.

This rule also amends the definition of “eligible drought” for ELAP in § 1416.102 to specify how it applies to losses due to the cost to transport livestock and feed as described above, and to cover situations where any area of a county has been rated by the U.S. Drought Monitor as having either a:

- D2 (severe drought) intensity for at least 8 consecutive weeks for the specific type of eligible grazing land or pastureland for the county; or

- D3 (extreme drought) or D4 (exceptional drought) intensity for the specific type of eligible grazing land or pastureland for the county, as determined by the Secretary.

Previously, a drought rating of D3 was required to qualify as “eligible drought” for water transportation and honey bee feed loss eligibility. This change will expand the availability of drought assistance for water transportation and honey bee feed loss and is consistent with the drought rating that is applicable to LFP as specified in § 1416.205 and Secretarial disaster area designations as specified in § 759.5(a). This rule also removes the restriction in § 1416.103(d)(5) on providing assistance for transportation of water to livestock located on land enrolled in CRP.

This rule also makes minor technical corrections to §§ 1416.106(c)(3), 1416.110(a)(4), 1416.110(b).

### **Notice and Comment, Paperwork Reduction Act, Congressional Review Act, and Effective Date**

The Administrative Procedure Act (APA, 5 U.S.C. 553(a)(2)) provides that the notice and comment and 30-day delay in the effective date provisions do not apply when the rule involves specified actions, including matters relating to benefits or contracts. This rule governs ELAP, which provides benefit payments and therefore falls within that exemption.

Further, as specified in 7 U.S.C. 9091, the regulations to implement ELAP are:

- Exempt from the notice and comment provisions of 5 U.S.C. 553; and
- Exempt from the Paperwork Reduction Act (44 U.S.C. chapter 35).

This rule is exempt from the regulatory analysis requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The requirements for the regulatory flexibility analysis in 5 U.S.C. 603 and 604 are specifically tied to the requirement for a proposed rule by section 553 or

any other law; in addition, the definition of rule in 5 U.S.C. 601 is tied to the publication of a proposed rule.

This is not a major rule under the Congressional Review Act (CRA), as defined by 5 U.S.C. 804(2). Therefore, FSA is not required to delay the effective date for 60 days from the date of publication to allow for Congressional review.

Therefore, this rule is effective upon publication in the *Federal Register*.

### **Executive Orders 12866 and 13563**

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. The assessment should include potential economic, environmental, public health and safety effects, distributive impacts, and equity. Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The requirements in Executive Orders 12866 and 13563 for the analysis of costs and benefits apply to rules that are determined to be significant.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866 and therefore, OMB has not reviewed this rule and an analysis of costs and benefits to loans is not required under either Executive Order 12866 or 13563.

### **Environmental Review**

The environmental impacts of this final rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and because USDA will be making the payments to producers, the USDA regulation for compliance with NEPA (7 CFR part 1b).

This rule implements discretionary amendments for ELAP. The discretionary aspects are to improve administration of the programs and clarify existing program requirements. FSA is providing the disaster assistance under ELAP to eligible producers. The discretionary provisions would not alter any environmental impacts resulting from implementing the mandatory changes to those programs. Accordingly, these discretionary aspects are covered by the following Categorical Exclusion in 7 CFR 799.31(b)(6)(vi) safety net programs administered by FSA.

Through this review, FSA determined that the proposed discretionary changes in this rule fit within the categorical exclusions listed above. Categorical exclusions apply when no extraordinary circumstances (§ 799.33) exist. This rule presents only discretionary amendments that will not have an impact on the human environments, individually or cumulatively. Therefore, FSA will not prepare an environmental assessment or environmental impact statement for this rule. This rule serves as documentation of the programmatic environmental compliance decision for this federal action.

#### **Executive Order 12988**

This rule has been reviewed under Executive Order 12988, “Civil Justice Reform.” This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. Payments for transportation of feed and livestock will be made retroactively starting on January 1, 2021, as discussed above. Before any judicial actions may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 are to be exhausted.

#### **Executive Order 13175**

This rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial

direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

USDA has assessed the impact of this rule on Indian Tribes and determined that this rule does not, to our knowledge, have Tribal implications that required Tribal consultation under Executive Order 13175 at this time. If a Tribe requests consultation, the USDA Office of Tribal Relations (OTR) will ensure meaningful consultation is provided where changes, additions, and modifications are not expressly mandated by law. Outside of Tribal consultation, USDA is working with Tribes to provide information about pandemic assistance, agricultural disaster assistance, and other issues.

### **Unfunded Mandates**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including cost benefits analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year for State, local or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

### **Federal Assistance Programs**

The title and number of the Federal Domestic Assistance Program found in the Catalog of Federal Domestic Assistance to which this rule applies are 10.091—Emergency Assistance for Livestock, Honey Bees, and Farm-raised Fish Program.

## **USDA Non-Discrimination Policy**

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Persons with disabilities who require alternative means of communication for program information (for example, braille, large print, audiotope, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720-2600 or (844) 433-2774 (toll-free nationwide). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at <https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint> and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or email: [OAC@usda.gov](mailto:OAC@usda.gov).

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## **List of Subjects in 7 CFR Part 1416**

Administrative practice and procedure, Agriculture, Bees, Dairy products, Disaster assistance, Fruits, Livestock, Nursery stock, Reporting and recordkeeping requirements, Seafood.



For the reasons discussed above, this final rule amends 7 CFR part 1416 as follows:

## **PART 1416—EMERGENCY AGRICULTURAL DISASTER ASSISTANCE PROGRAMS**

1. The authority citation for part 1416 continues to read as follows:

**Authority:** Title I, Pub. L. 113-79, 128 Stat. 649; Title I, Pub. L. 115-123; Title VII, Pub. L. 115-141; and Title I, Pub. L. 116-20.

### **Subpart B—Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program**

2. In § 1416.102, revise the definition of “eligible drought” to read as follows.

#### **§ 1416.102 Definitions.**

\* \* \* \* \*

*Eligible drought* means that any area of the county has been rated by the U.S. Drought Monitor as having D2 (severe drought) intensity for at least 8 consecutive weeks for the specific type of eligible grazing land or pastureland for the county, or D3 (extreme drought) or D4 (exceptional drought) intensity for the specific type of eligible grazing land or pastureland for the county, as determined by the Secretary:

- (1) At any time during the program year, for additional honey bee feed loss;
- (2) That directly impacts water availability at any time during the normal grazing period (for example, snow pack that feeds streams and springs), as determined by the Deputy Administrator or designee, for losses resulting from transporting water to livestock; or
- (3) At any time during the normal grazing period, for losses resulting from the additional cost incurred to transport livestock feed or eligible livestock to feed, for additional mileage above normal.

\* \* \* \* \*

3. In § 1416.103, revise paragraph (d)(5) introductory text and add paragraph (d)(6) to read as follows.

**§ 1416.103 Eligible losses, adverse weather, and other loss conditions.**

\* \* \* \*

(d) \* \*

(5) A loss resulting from the additional cost of transporting water to eligible livestock as specified in § 1416.104(a) due to eligible adverse weather, eligible loss condition, or eligible drought, as determined by the Deputy Administrator, including, but not limited to, costs associated with water transport equipment rental fees, labor, and contracted water transportation fees. The cost of the water is not eligible for payment. To be eligible for additional cost of transporting water to eligible livestock, the livestock must be livestock that would normally have been grazing on eligible grazing lands that meet all of the following:

\* \* \* \*

(6) A loss resulting from the additional cost incurred on or after January 1, 2021, to transport, eligible livestock to feed or livestock feed to eligible livestock for additional mileage above normal, due to eligible adverse weather, an eligible loss condition, or eligible drought, as determined by the Deputy Administrator, including costs associated with treating livestock feed to prevent the spread of invasive pests. The cost of the feed is not eligible for payment. Negligence, mismanagement, or wrongdoing by the producer is not considered an eligible loss condition for livestock or feed transportation costs. To be eligible for a loss under this paragraph, the livestock must be livestock that would normally have been on eligible grazing lands physically located in the county where the eligible adverse weather, eligible loss condition, or eligible drought, as determined by the Deputy Administrator, occurred.

\* \* \* \*

4. In § 1416.104, revise paragraph (a) introductory text, paragraph (b) introductory text, and paragraph (c) introductory text to read as follows.

**§ 1416.104 Eligible livestock, honeybees, and farm-raised fish.**

(a) To be considered eligible livestock for livestock grazing and feed; losses resulting from transporting water, feed, and livestock; and gathering livestock to treat for cattle tick fever; livestock must meet all the following conditions:

\* \* \* \* \*

(b) The eligible livestock types for grazing and feed losses; losses resulting from transporting water, feed, and livestock; and gathering livestock to treat for cattle tick fever are:

\* \* \* \* \*

(c) Ineligible livestock for grazing and feed losses and losses resulting from transporting water, feed, and livestock include, but are not limited to:

\* \* \* \* \*

5. In § 1416.105, revise paragraph (a) introductory text to read as follows.

**§ 1416.105 Eligible producers, owners, and contract growers.**

(a) To be considered an eligible livestock producer and receive payments for feed losses; losses resulting from transporting water, feed, or livestock; and gathering livestock to treat for cattle tick fever; the participant must have:

\* \* \* \* \*

6. In § 1416.106:

a. Revise paragraph (a)(2)(i);

b. In paragraph (c)(3), remove the words “A loss resulting from the additional cost incurred for” and add the words “Additional cost of” in their place; and

c. Add paragraph (c)(5).

The revision and addition read as follows.

**§ 1416.106 Notice of loss and application process.**

(a) \* \* \*

(2) \* \* \*

(i) For livestock feed and grazing losses; losses resulting from transporting water, feed, and livestock; and gathering livestock to treat for cattle tick fever; a completed Emergency Loss Assistance for Livestock Application;

\* \* \* \* \*

(c) \* \* \*

(5) Additional cost incurred to transport eligible livestock to feed or livestock feed to eligible livestock for additional mileage above normal, due to an eligible adverse weather, an eligible loss condition, or eligible drought, as determined by the Deputy Administrator, including costs associated with treating livestock feed to prevent the spread of invasive pests. Verifiable or reliable records include, but are not limited to, commercial receipts, contemporaneous records, and invoices. Records must clearly indicate the dates on which livestock or feed was transported and the total mileage transported.

\* \* \* \* \*

7. In § 1416.110:

a. In paragraph (a)(4), remove the semicolon at the end of the paragraph and add a period in its place;

b. In paragraph (b) introductory text, remove the word “more” and add “more than” in its place, and remove the word “calculated” and add “will be calculated” in its place;

c. Redesignate paragraph (n) as paragraph (q); and

d. Add new paragraph (n) and paragraphs (o) and (p).

The additions read as follows.

**§ 1416.110 Livestock payment calculations.**

\* \* \* \* \*

(n) Payments for losses resulting from the additional cost of transporting eligible livestock to feed or livestock feed to eligible livestock, for additional mileage above normal, in excess of 25 miles per truckload and for no more than 1,000 miles per truckload of livestock or

livestock feed during the program year, as specified in § 1416.103(d)(6) will be calculated based on a national payment rate, as determined in § 1416.109, multiplied by:

(1) The national average price per mile to transport a truckload of livestock or livestock feed; and

(2) The actual number of additional miles above normal to transport livestock or livestock feed by an eligible producer, in excess of 25 miles per truckload of livestock or feed and for no more than 1,000 miles per truckload of livestock or feed during the program year.

(o) The national average price per mile to transport a truckload of livestock or feed to be used in the calculation for paragraph (n)(1) of this section is determined by the Deputy Administrator for each program year using a national cost formula developed by FSA based on the cost of hauling feed or livestock above normal mileage, not to include the first 25 miles. The national average price per mile considers the average cost for hauling a truckload of forage or livestock from sources 200 miles away. The Deputy Administrator may determine a different price per mile for a particular state, if the Deputy Administrator determines that a different price is necessary due to differences in state hauling costs compared to national average costs. The original physical location of the livestock will determine the applicable state for payment purposes.

(p) Payments for losses resulting from costs associated with treating livestock feed transported above normal to prevent the spread of invasive pests, as specified in § 1416.103(d)(6), will be calculated based on a national payment rate, as determined

in § 1416.109, multiplied by the producer's actual cost for controlling invasive pests in livestock feed transported above normal.

\* \* \* \* \*

Robert Ibarra,  
Executive Vice President,  
Commodity Credit Corporation, and

Marcus Graham,  
Acting Administrator,  
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